CORRESPONDENCE.

Bills of Exceptions—Contradictory Acts of 1916—Explanatory.—The two contradictory statutes relating to bills of exceptions, as passed by the 1916 Legislature was noted in 2 Va. L. R., N. S., 212, and an explanation by the author of the "long bill," Mr. Marshall R. Peterson, was offered in 2 Va. L. R., N. S., 293, to which we are pleased to also add, the following:

September 13, 1916.

Editor of the Virginia Law Register,
Charlottesville, Va.

Dear Sir:—

I have read with considerable interest your comment in the July number of the Virginia Law Register upon the two bills recently passed by the Legislature relating to bills of exceptions. I have also read the reply of Mr. Marshall R. Peterson, of the Lawrenceville Bar, draftsman of the bill abolishing the bill of exception.

As patron in the Senate of the bill abolishing the bill of exception, I have been intending for sometime to write you fully in regard to the circumstances attending the passage of both of these bills, but the press of business has prevented. Knowing all these circumstances as I do, and knowing the occasion for each bill and the objects which each was designed to accomplish, I cannot find the occasion for any alarm in regard to the situation.

The bill amendatory of 3385 of the Code was drawn by Judge Kelly, of the Supreme Court of Appeals, and was introduced in both branches of the legislature, on January 15th, 1916, at the instance of the Judges of the Court of Appeals. In the House it was known as H. B. 52 and in the Senate as S. B. 48. H. B. 52 passed the House on Thursday, January 27th, 1916, by vote of 70 to 0, and on Monday, February 7th, this bill was substituted in the Senate for S. B. 48. On the same day that H. B. 52 was substituted for S. B. 48, the former was referred to the committee for Courts of Justice, from which it was reported on Tuesday, February 15th, and placed on the calendar of the Senate. On Thursday, March 9th, 1916, afternoon session, H. B. 52 was taken up by the Senate and ordered to its third reading. I was out when the bill was thus advanced and upon return to my seat I moved to reconsider the vote by which the bill was advanced, but this motion was rejected by a vote of 15 to 16. On Friday, March 10th, 1916, morning session, the bill was taken up and passed without a dissenting vote. Up to the moment of the passage of the bill I had persistently held out my objections, but upon being told a number of times that if I did not withdraw my objections, I would be responsible for the execution of the death penalty in a case of an improper conviction, I ceased to oppose the bill.

H. B. 52, having been slightly amended in the Senate, had to go back to the House for concurrence in the amendments. Accordingly, on Saturday, March 11th, afternoon session, the Senate amendments to H. B. 52 were agreed to by vote of 34 to 44 and the bill passed the House, and was signed by the speaker on March 15th. This bill was signed by the Governor on March 21st.

On Tuesday, February 15th, S. B. 335, to abolish the bill of exceptions, etc., was introduced by me in the Senate. On Saturday, February 12th, the same bill was introduced in the House and referred to the committee for Courts of Justice, from which it was reported on Friday, February 18th, as H. B. No. 403. On Tuesday, March 7th, 1916, night session, this bill, after being slightly amended, was passed by the House by a vote of 54 to 0. Afterwards, when it came over to the Senate, I dropped S. B. 335 and directed my efforts to H. B. 403. This bill passed the Senate on March 10th, 1916, afternoon session, by a vote of 36 to 0. H. B. 52 was passed during the morning session of the same day. On Saturday, March 11th, the passage of H. B. 403 in the Senate was communicated to the House, and on Saturday, March 18th, the bill was signed by the speaker of the House.

The sole purpose of H. B. 52, amending 3385 of the Code, was to enable the Court of Appeals to read the record in the case of the Commonwealth *v.* Canter, from Washington County, in which the bills of exception had not been signed as required by 3385 of the Code. It having been admitted by the Attorney General, and being apparent to the Court, that the evidence contained in the record was not sufficient to sustain the conviction, some enabling act became necessary whereby the Court might read the record and reverse the judgment of conviction. This was stated time and again to be the object of the bill and no one who considered it ever thought of it as having any other object. It was an emergency measure, and therefore went into effect immediately and accomplished the object for which it was designed long before the bill abolishing the bill of exception ever became a law. Both bills were before the committee and on the calendar of the Senate during the last two working days of the session. (The Legislature adjourned on March 11th into a constructive session which lasted until March 18th.)

While I opposed the bill amending 3385 of the Code, and as a consequence of this opposition the bill was held upon the calendar of the Senate for quite a long time, I never urged, as an objection, the pendency of the other bill. To have done that would not have helped to defeat H. B. 52, and might have prejudiced the chances of the other bill which I was very anxious to see become law. I did, however, call to the attention of the draftsman, Mr. Peterson, the fact that this bill amending 3385, was pending, and he replied to the effect that it was merely an emergency measure and would not affect

our bill—which seemed to be the concurrence of opinion in the Senate.

H. B. 403, abolishing the bill of exception, as Mr. Peterson states, had for its object the saving of time and expense, the enlarging of the powers of the Court of Appeals, the elimination of all formula possible, consistent with clearness, and to make impossible the interposing in the Court of Appeals of technical errors in the preparation records, for the purpose of preventing the Court of Appeals from reading the record and getting at the merits of the case.

While it is true that the object of the bill amending 3385 of the Code, is not expressed on its face, nothing is clearer than that when the Courts come to construe an act of the Legislature it is legitimate for them to inquire into the objects which the act was designed to accomplish. Clearly, in the minds of the Legislature, H. B. 52 had but one object and that was to prevent the plaintiff in error in the Canter case from suffering a capital sentence resulting from an improper conviction. The bill went into effect immediately and accomplished its object before H. B. 403 ever became law.

In as much as these statutes are remedial, Mr. Blackstone's commentary on the subject becomes applicable, namely, that there are three points to be considered in the construction of all remedial Legislation—"the old law, the mischief, and the remedy—that is, how the law stood at the making of the act, what the mischief was for which the old law did not provide, and what remedy the Legislature hath provided to prevent this mischief; and it is the business of the judge so to construe the act as to suppress the mischief and advance the remedy."

Statutes are sometimes extended to cases not within the letter of them; and cases are sometimes excluded from the operation of the statute, though within the letter, on the principle that what is within the intention of the makers of the statute is within the statute, though not within the letter; and that what is not within the intention of the makers is not within the statute; it being an acknowledged rule that in the construction of statutes that the intention of the makers ought to be regarded. In order that the intention of the legislature may be carried out, the general meaning of the words of a statute is often much restricted so that the statute may be given a construction which harmonizes with the spirit of the act. Courts often restrain the operation of statutes within much narrower limits than their words import, on being satisfied that the literal meaning of the language, disconnected with the objects which the act was designed to accomplish, though not expressed on its face, would extend the act to cases which the legislature never intended or designed should be embraced in it. In such cases a great decree of implication is often called to aid the intent. Upon these principles a statute is sometimes construed even contrary to its literal mean-

ing, when a literal construction would result in an absurdity and inconsistency. Surely, no Court would place upon these statutes a construction which must necessarily occasion great public and private mischief in preference to a construction which would do neither, but on the contrary would considerably advance remedies and suppress mischief.

These two statutes are in *pari materia* and of course should be read and construed together as if they formed parts of the same statute. Our Court of Appeals has held that this rule applies to the construction of the Code of 1887, to the several parts thereof which relate to the same subject, because the Code after it was revised and adopted by the legislature, became one act and must be considered as a whole. That being true, it would seem that this rule would apply with peculiar force in the construction of two statutes, which relate to the same subject, were conceived by the same minds, prepared by the same hands, and adopted at the same time by the same legislative body.

In conclusion, to say that neither of these statutes is law is an absurdity, because the legislature certainly did not intend that its acts should be nugatory; to say that one and not the other is law is equally absurd, because one can possibly have no priority over the other, both being passed by both houses on the same day, and likewise approved by the Governor on the same day. The only reasonable construction, in the opinion of the writer, that can be placed upon them, in the light of the intention of the makers, is that each should be given effect to the extent that each may accomplish the objects for which each was designed. In practice the writer expects to follow this construction.

Very respectfully,

GEO. E. ALLEN.

September 14th, 1916.